

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
AT&T Request for Waiver of)	WT Docket No. 18-67
Geographic Coverage Requirement for)	
700 MHz License in Alaska, WQIZ597)	

REPLY COMMENTS OF AT&T

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AT&T Services, Inc., on behalf of its subsidiary, AT&T Mobility Spectrum LLC, (collectively, “AT&T”), files these reply comments in support of its Petition for Waiver of the geographic construction requirements for lower 700 MHz B block license WQIZ597.¹

I. INTRODUCTION AND SUMMARY

AT&T uses WQIZ597 to provide broadband service to over 75% of the population of CMA316. Applying the geographic benchmarks to this license would cause a two-year reduction in the license term, which would automatically cause AT&T to lose the right to provide service in unserved area. This result is inequitable, contrary to the public interest, and undermines the purpose of rule section 27.14(g). Rigid application of geographic performance benchmarks to huge license areas and stringent penalties for nonperformance for corresponding licenses was not the Commission’s goal when it adopted the lower 700 MHz B block performance benchmarks. Instead, the Commission was focused on performance benchmarks and their benefit for smaller license areas, particularly the potential to improve coverage in rural areas.

That is not the situation in CMA316. Instead, the market is vast in size. Building and maintaining a network to serve CMA316 is extremely challenging due to its topography, climate,

¹ AT&T Amended Petition for Waiver of Geographic Coverage Requirement for 700 MHz License in Alaska, WQIZ597, WT Docket No. 18-67 (filed March 12, 2018).

demographics, lack of infrastructure, and other factors, the combination of which, in AT&T's experience, is unique to Alaska. AT&T's expectation that it had met, and in the future will meet, the interim benchmark in CMA316 does not reduce the scope of those challenges and if anything, reinforces the difficulties associated with building-out remote areas. In CMA316, AT&T miscalculated the extent of government lands that could be excluded from licensed areas when calculating geographic coverage, a factor contributed to by the lack of guidance about how to apply the government lands exclusion. All of these circumstances demonstrate that geographic benchmarks are inappropriate for CMA316 and that their rigid application would be inequitable and not in the public interest.

This is especially the case because of AT&T's extensive coverage as of December 2016, its increase in coverage since that date, and its commitment to deploy service to at least 85% of Alaskans in CMA316, which promises to improve coverage to rural tribal lands. Retention of its license would also give AT&T the flexibility to continue expanding service for Alaskans as needs arise. Alaska is notoriously underserved and these commitments from AT&T are significant, higher than any other commercial service benchmarks, and will provide service in some of the remotest of areas, where service otherwise may not be provided. For these reasons, grant of the waivers requested by AT&T and application of population-based benchmarks would be in the public interest.

The Rural Wireless Association, Inc. ("RWA"), the only commenter, opposes AT&T's Petition. RWA's objections are unconvincing because it fails to acknowledge the uniqueness of CMA316, the challenges of building and maintaining a network in its remote areas, and speculates about the ability of other providers to provide the same or better levels of service. The Commission should grant AT&T's Petition without delay.

II. DISCUSSION

Section 1.925(b)(3) authorizes the Commission to waive its rules upon a showing that:

- (i) The underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²

AT&T's Petition demonstrates that a waiver is justified on both counts.

A. The underlying purpose of the geographic construction benchmarks would not be served and grant of the waiver is in the public interest.

The underlying purpose of Commission rule section 27.14(g) is “to better promote access to spectrum and the provision of service, especially in rural areas.”³ As of December 13, 2016, AT&T served over 75% of the population of CMA316 and has committed to serve over 85% of the population of the market by June 13, 2020, which represents 15% more coverage than the 70% end-of-term population benchmark required for the Lower 700 MHz E block,⁴ 10% more coverage than the 75% end-of-term population benchmark required for the WCS A and B blocks,⁵ and greater coverage than Commission rules require for any other commercial service. In the instant case, grant of the waiver would clearly lead to improved coverage for consumers in Alaska, in line with the purpose of rule section 27.14(g).

² 47 C.F.R. §1.925(b)(3).

³ *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15348 (2007) (“700 MHz Second Report and Order”).

⁴ 47 CFR § 27.14(h).

⁵ 47 CFR § 27.14(p)(1).

All additional coverage AT&T will provide would be rural. CMA316 supports a population of only about 201,000 but covers nearly 233,000 square miles, a population density of about one person per square mile.⁶ The population density in five of the ten boroughs (the equivalent of counties) comprising CMA316 is even less than 0.5 persons per square mile and none of the boroughs reach a population density of even four persons per square mile.⁷ Those rural areas of Alaska are historically underserved. Alaska ranks last in the United States for access to broadband service with a speed greater than 25 Mbps⁸ and last among the states with download speeds greater than 3 Mbps combined with upload speeds of greater than 0.7 Mbps.⁹ Alaska is also 49th of 50 states in terms of population served by no broadband service provider and by at least one broadband provider and 50th out of 50 states in terms of population served by at least two broadband providers.¹⁰

Granting AT&T's request would allow it to retain rural coverage that it has expanded in these underserved areas since December 2016 and further expand rural coverage with the

⁶ Application of the Alaska Wireless Network, LLC and T-Mobile License LLC for Consent to Assign License, WT Docket No. 15-265, Memorandum Opinion and Order, 31 FCC Rcd 4447, 4454 (2016).

⁷ Alaska: 2010, Population and Housing Unit Counts, 2010 Census of Population and Housing, (June 2012), available at <https://www.census.gov/prod/cen2010/cph-2-1.pdf>.

⁸ See Nat'l Telecommunications & Info. Admin., U.S. Dep't of Commerce, U.S. Broadband Availability: June 2010 – June 2012, at 12, tbl. 5 (May 2013), http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf.

⁹ See Nat'l Telecommunications & Info. Admin., U.S. Dep't of Commerce, U.S. Broadband Map, June 2014, available at <https://www.broadbandmap.gov/rank/all/state/percent-population/within-nation/speed-download-greater-than-3mbps-upload-greater-than-0.768mbps/ascending/>.

¹⁰ See Federal Communications Commission, Compare Broadband Availability in Different Areas (Dec. 2016), available at https://broadbandmap.fcc.gov/#/area-comparison?selectedTech=acfosw&selectedSpeed=25_3&searchtype=state.

additional coverage planned through 2019, including spectrum that will be used by public safety. This additional coverage is significant for Alaska residents, over 85% of which would have access to wireless service, which, as explained above, far exceeds the highest benchmarks required by Commission rule.

RWA shrugs off AT&T's commitment to increase population coverage in CMA316 and urges the Commission to deny AT&T's waiver request, arguing that the lease agreements AT&T has entered into covering CMA316 demonstrate that other providers would apply for the spectrum and build out the same areas.¹¹ This is pure speculation. AT&T's arrangement with its lessees is part of a larger relationship where AT&T shares resources, such as switching services, that may not otherwise be available to those lessees, allowing the lessees to bring LTE to portions of Alaska much faster. There is no guarantee that other providers would apply to offer service over the Lower 700 MHz B block unserved areas absent such an arrangement or, even if some did apply, that the combined service in CMA316 would cover at least 85% of the population of the market.

Lastly, the application of strict geographic benchmarks for licensed areas as large as CMA316 is not what the Commission intended when it developed the rules for the Lower 700 MHz band. In the *700 MHz Second Report and Order*, the Commission emphasized that it was creating licenses in the Lower 700 MHz A and B block "based on *smaller geographic service areas*, which would be more readily available to providers that tend to serve rural consumers" and that it was applying the stringent geographic benchmarks across these "smaller service areas."¹² CMA316 is not a smaller service area. At 233,000 square miles, CMA316 is larger in size than

¹¹ Comments of The Rural Wireless Association, Inc., WT Docket No. 18-67, at 8 (filed April 30, 2018) ("RWA Comments").

¹² *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49 (emphasis added).

half of the Upper 700 MHz Regional Economic Group (“REAG”) licenses,¹³ which the Commission considered appropriate for population-based benchmarks due to their large geographic areas, significant capital investment, and logistical challenges associated with lack of existing infrastructure:

With regard to the use of population-based benchmarks for REAG licensees, we agree . . . that this type of build-out requirement is appropriate for licensees with large geographic areas to allow for roll out of advanced services on a nationwide or regional basis. In particular, we are mindful of the significant capital investment and logistical challenges associated with building a regional or nationwide system without existing infrastructure.¹⁴

RWA also argues that the Commission should reject AT&T’s application because the Commission already refused to adopt population-based benchmarks for all Lower 700 MHz B block licenses in the *700 MHz Second Report and Order*.¹⁵ RWA misses the point. The Commission’s adoption of geographic benchmarks for all Lower 700 MHz B block licenses does not mean that the Commission cannot determine that population-based benchmarks would better promote access to spectrum and the provision of service in certain geographic areas, especially in a unique rural area like CMA316. In fact, CMA316 should be one of those cases. In that market, rigid application of geographic benchmarks would undermine the purpose of rule section 27.14(g) and justifies grant of a waiver to AT&T and application of population-based benchmarks.

¹³ CMA316 is larger than REAGs 1-Northeast (146,174 sq. mi.), 8-Hawaii (6445 sq. mi.), 9-Guam and Northern Mariana Islands (392 sq. mi.), 10-Puerto Rico and U.S. Virgin Islands, (3618 sq. mi.), 11-American Samoa (77 sq. mi.), and 12-Gulf of Mexico (226,112 sq. mi.) and near in size to REAG 2-Southeast (256,634 sq. mi.).

¹⁴ *700 MHz Second Report and Order*, 22 FCC Rcd at 15351.

¹⁵ RWA Comments at 4-5.

B. Unique circumstances make application of the geographic construction benchmarks inequitable and contrary to the public interest.

It would be inequitable to rigidly apply geographic construction benchmarks to WQIZ597 because of the uniqueness of CMA316 and the uncertainty associated with identifying government and native lands. Granting AT&T a waiver instead and applying alternative population-based benchmarks would be in the public interest because it would allow AT&T to provide much needed broadband service in rural areas of Alaska.

1. The uniqueness of CMA316 impacted AT&T's ability to meet the interim benchmark.

AT&T's Petition explains how the demographics, climate, infrastructure, and vastness of Alaska, and more particularly CMA316, make it unique and difficult to serve, even in the best of circumstances.¹⁶ The Commission has recognized that "carriers in remote Alaska [have] unique concerns" due to "its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."¹⁷ "These challenges can drive up costs while the low population bases in these areas strain revenue,"¹⁸ requiring carriers to make significant capital investments to build and continue to serve.

¹⁶ See, e.g., AT&T Petition at 2 ("Due to the vastness of CMA316, AT&T . . . will not meet the 70% end-of-term geographic coverage benchmark."); *Id.* at 4 (Explaining that the discrepancy between AT&T's coverage and the geographic benchmarks "is . . . inexorable due to the lack of population density outside of the few towns and communities, and the remoteness of the Alaskan interior.")

¹⁷ *Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162 (2016) (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829 (2011)).

¹⁸ *Id.*

Nevertheless, AT&T has made and will continue to make those investments. AT&T has expanded service since its interim performance filing and has leased spectrum and made its resources available to other carriers to expedite deployment. AT&T also has planned additional coverage that will include approximately 4,300 Alaska natives and 200 square miles of Alaska native lands. This coverage is not easily replaced. A waiver would also allow AT&T to build upon its investments and experience in providing service to the CMA316's population, and position AT&T to expand service to communities that might become established in the future.

RWA argues that AT&T is not entitled to a waiver of the interim construction benchmark because its business decision to delay site construction, not Alaska's unique conditions, prevented AT&T from satisfying the benchmark.¹⁹ This argument strains credulity. AT&T holds hundreds of licenses in the 700 MHz B block, many of which are extremely challenging to serve, and yet has requested a waiver for only two—both in Alaska. That fact speaks for itself.

Further, AT&T has always been concerned about its ability to meet the interim benchmarks in CMA316 due to the unique conditions in Alaska, as evidenced by the inclusion of CMA316 in AT&T's initial Petition for Waiver of the geographic construction benchmarks for WQIZ597 and WQIZ358. AT&T amended that Petition to remove WQIZ597 before public notice in anticipation of meeting the interim benchmark. But, AT&T's incorrect assessment and its plans to add coverage does not alter the challenges of serving Alaska and the role those challenges played in preventing AT&T from ultimately meeting the interim benchmark by the deadline. That incorrect assessment should not disqualify AT&T from demonstrating sufficient cause for a waiver under rule section 1.925 or automatically mean that AT&T has not made that showing. In fact, AT&T has made that showing.

¹⁹ RWA Comments at 6-7.

2. The uniqueness of the government lands exclusion created opportunities for confusion and mistakes.

AT&T's Petition explains that the discrepancy in meeting the interim construction benchmark occurred in part due to the ambiguity in Commission rules and processes as to the appropriate sources for identifying Alaska native lands and the treatment of those lands. And, despite working closely with the Commission on identifying government lands, AT&T miscalculated, primarily by excluding some tribal lands. The government lands exclusion is unique, applying only to the geographic construction requirements for Lower 700 MHz A, B, and E licenses. And, there is no guidance on how to identify government lands or tribal lands that are supposed to be excluded. This lack of guidance created uncertainties, an unfortunate circumstance in light of the consequences of a miscalculation.

RWA admits that Commission "rules do not specify any particular processes or sources to identify native lands and place the burden of identifying such lands on the licensee,"²⁰ but argues that AT&T's miscalculation does not justify a waiver because "[t]he requirement to include native lands in calculating geographic coverage could not be more crystal clear."²¹ AT&T disagrees. There are many questions associated with the government lands exclusion and the identification and treatment of tribal lands: What sources are credible for identifying government and tribal lands? Does the prohibition on excluding tribal lands apply to only "populated" tribal lands, as stated in the *700 MHz Second Report and Order*? If so, how would "populated" tribal lands be determined? Do Alaska Native Lands qualify as tribal lands held by governments? Are there other impacts arising from application of the Alaska Native Claims Settlement Act? It may be

²⁰ *Id.*

²¹ *Id.* at 6, FN 21.

debated whether answers to these questions would benefit AT&T, but they demonstrate that the process is anything but crystal clear.²² In AT&T's view, the government lands exclusion, and its accompanying qualifier for tribal lands, were sufficiently unclear as to make it inequitable for licensees to find out how they would be interpreted only after the interim performance deadline.

RWA observes that AT&T did not request an extension of the interim build deadline.²³ Although AT&T sought to resolve both the interim and final performance benchmark issues together, to the extent that the Commission seeks a more limited remedy, AT&T would welcome an extension of the interim performance deadline until the date of a Commission Order in this docket coupled with an alternative population-based coverage benchmark for the end-of-term of the license. Such limited relief could be narrowly tailored to enhance the public interest and avoid the inequitable application of the final geographic coverage benchmark in CMA316 and the consequent acceleration of the final construction deadline by two years.

3. RWA's comparison of Alaska to American Samoa is misplaced.

RWA spends considerable effort arguing that AT&T does not deserve a waiver because it expected to meet the 35% interim benchmark. Not only is that argument not persuasive, it does not apply to AT&T's request for a final population-based benchmark. Instead, for that requested relief, RWA seems to rely mostly on general arguments that granting the waiver is not in the public interest and on the Commission's 2017 decision to deny the request of AST Telecom, LLC d/b/a

²² AT&T would submit that it has met the 35% geographic performance requirement even with the exclusion of native lands because only "populated" native lands need be included, i.e., unpopulated native lands can be excluded. 47 C.F.R. §27.14(g).

²³ RWA Comments at i.

Bluesky²⁴ for a waiver of the final geographic construction benchmarks for 700 MHz Band A and B block Licenses WQJQ800 and WQOU674 in American Samoa. In that docket, the Commission granted additional time for Bluesky to meet its interim construction benchmark but refused to adopt alternative final population-based benchmarks, even though it recognized the challenges of providing service in the market. This decision is instructive, but not controlling.

In that decision, the Commission recognized Bluesky's good faith diligence to build out the market, even though it made a mistake in calculating its geographic coverage and failed to reach the performance benchmark by the deadline. These factors plus Bluesky's continued build-out efforts led the Commission to conclude that Bluesky warranted an extension to meet its interim benchmark. Though the Commission did refuse to adopt a final population-based benchmark, the decision does not stand for the proposition advanced by RWA because American Samoa simply is not comparable to Alaska. First, at 233,000 square miles, CMA316 is over 3,000 times larger than American Samoa, which comprises a land area of *less than 77 square miles*.²⁵ Second, population density in American Samoa is over *726 persons per square mile*, compared to about 1 person per square mile in CMA316. Third, the Commission found that "[b]y its own admission, Bluesky is already providing service to the vast majority of areas that it ultimately intends to serve

²⁴ Letter from Roger S. Noel, Chief, Mobility Division, Federal Communications Commission, to Kent D. Bressie, Harris, Wiltshire & Grannis LLP, *Request for Waiver of Interim and Final Geographic Construction Benchmarks for Lower 700 MHz Band A and B Block Licenses WQJQ800 and WQOU674 in American Samoa*, 32 FCC Rcd 9307 (2017) ("WQJQ800/WQOU Letter").

²⁵ See U.S. Census Bureau, *Population, Housing Units, Land Area, and Density for U.S. Island Areas: 2010*, available at <https://www.census.gov/population/www/cen2010/cph-t/t-8tables/table1a.pdf>.

in American Samoa, citing the purported impracticability of expanding service further by any appreciable amount.”²⁶

In contrast, AT&T has continued and will continue to expand service in CMA316. Future expansion beyond 2019 depends on business needs and community growth, as communities in Alaska frequently arise in a short period of time with the opening of commercial oil and gas facilities. Allowing AT&T to fulfill its commitment to reach 85% population coverage in CMA316 and the flexibility to expand service to new communities that may arise in the interior regions of Alaska is in the public interest and justifies the requested waiver.²⁷

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Respectfully submitted,



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²⁶ WQJQ800/WQOU Letter, 32 FCC Rcd at 9314.

²⁷ RWA attempts to argue that AT&T does not warrant a waiver of the deadline for filing its interim performance showing under Commission rule sections 1.946(d), 1.95, and 27.14(k). AT&T submits that its justification for grant of waiver of the performance showing is likewise sufficient to meet the components for justifying a waiver of the deadline for filing that performance benchmark.